

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

| | | |
|---------------------------------------|---|-----------------------|
| IN THE MATTER OF THE APPLICATION |) | |
| OF DELMARVA POWER & LIGHT COMPANY, |) | |
| EXELON CORPORATION, PEPCO HOLDINGS |) | PSC DOCKET NO. 14-193 |
| INC., PURPLE ACQUISITION CORPORATION, |) | |
| EXELON ENERGY DELIVERY COMPANY, LLC |) | |
| AND SPECIAL PURPOSE ENTITY, LLC |) | |
| FOR APPROVALS UNDER THE PROVISIONS |) | |
| OF 26 <i>Del. C.</i> §§ 215 AND 1016 |) | |
| (FILED JUNE 18, 2014) |) | |

**JEREMY FIRESTONE'S RESPONSE IN SUPPORT OF MOTION FOR
RECONSIDERATION OF ORDER 8638**

Jeremy Firestone, *Pro Se*
130 Winslow Road, Newark, DE 19711
302 831-0228 (office/day)
jf@udel.edu

Intervenor Jeremy Firestone hereby files this response in support of Motion for Reconsideration of Order 8638 in that the Order is arbitrary and capricious, an abuse of discretion, not in the interest of justice, contrary to statutory law, and in violation of due process and equal protection.

1. On October 9, 2014, the Mid-Atlantic Renewable Energy Coalition ("MAREC"), Clean Air Council ("CAC") and the Delaware Department of Natural Resources and Environmental Control ("DNREC") jointly filed a Motion for Reconsideration of Hearing Examiner's Order and Directives.
2. I file this Response in support of that portion of the Motion that seeks reconsideration of Order 8638, which was issued on October 2, 2014. I take no position on other portions of the Motion.

3. Order 8638 is entitled “Agreed Order Regarding Depositions.” Not only did I not agree to Order 8638, I was never consulted on the same.
4. The Order unreasonably limits questioning of the Joint Applicants’ witnesses to a mere fifteen (15) minutes per Intervenor in contravention of 26 *Del. C.* § 508 and 26 *Del. Admin. C.* §1001-2.6.1.¹ While the Hearing Examiner has been delegated authority to exercise his discretion to vary the discovery process, that discretion is limited in the “interest of justice.” It is also limited by the statutory right of the parties to take depositions, 26 *Del. C.* § 508, and by notions of due process and equal protection.
5. Other parties to this docket do not and cannot adequately represent or protect my interests. While the PSC Staff is the first among equals and the DPA the second among equals in this docket given their statutory responsibilities, they remain equals. Order 8638 allocates the lion-share of the deposition time to PSC Staff, the Division of Public Advocate (DPA) and the Joint Applicants, yet we do not know at this time how the parties will be aligned at the time of settlement or hearing. My interests may be aligned with the PSC Staff and the DPA, aligned with one, but not the other, or they may be opposed to both at the time of hearing or settlement.
6. Moreover, the fact that there are other Intervenorors that have common interests in renewable energy also does not mean that our interests will ultimately be aligned. While that common interests are germane from an efficiency standpoint in a deposition, and should serve to limit the cumulative time required, it may or may not be germane from the point of having common positions at the time of hearing and settlement. For example, the fact that DNREC is in the same Administration as DPA suggests that DNREC’s ultimate position, regardless

¹ Indeed, such restricted attendance so limits us that it may be a better use of time to read the transcripts. Per Order of the Commission on or about October 14, parties are allowed to take depositions whether represented by counsel or not.

of how simpatico DNREC and I may now appear, may align with DPA rather than with me. Likewise, my interests, while facially similar to those of MAREC, are not the same as MAREC's, which for the most part is comprised of commercial entities. And so on. Thus, while it is not inappropriate that the PSC Staff and DPA take the lead, due process, equal protection, and the "interest of justice," require that as a matter of law that all parties have an equal opportunity and equal time in which to take a deposition. Any other result is arbitrary and capricious.

7. The time limitations imposed to take deposition testimony is arbitrary, unduly constrained and counter to the interest of justice. Indeed, much of the time could be consumed by the Joint Applicants counsels' monologues and objections and by extraneous testimony of its witnesses. Although some witnesses may require no questions and others a limited few, some witnesses will require substantially more than 15 minutes (e.g., the Joint Applicants' expert witness, Dr. Susan Tierney).
8. Order 8638 also states that the depositions of Christopher Crane, Joseph Rigby and Denis O'Brien will be limited in duration (generally to four hours among Staff, the Public Advocate and the Joint Applicants). Although those depositions will likely be circumscribed and may well be shorter than four hours, no one knows how long they will take until the depositions actually occur. It is worth noting that these are not individuals who Staff, the Public Advocate or Intervenors subpoenaed or even sought out. Rather, they are three of the Joint Applicants' voluntarily selected witnesses who filed direct testimony. One may question how valuable the testimony of high corporate officials will be on the issue of whether or not the merger is for a proper purpose and consistent with the public interest. One also may question more generally whether those witnesses will bring forward relevant information of value and question the Joint Applicants' and their lawyers' decision to use them as witnesses.

But once that decision was made, the other parties have a right to take the depositions of those witnesses and to do so without regard to arbitrary time deadlines. Pursuant to the Scheduling Order of September 29, 2014, the evidentiary hearings in this matter are now scheduled for February 18-20, providing ample time for depositions. As such, the limitation on length runs counter to the interest of justice.

9. Under 26 *Del. C.* § 508 all parties are given the right to take depositions, including the right to depose parties other than those that Staff and the DPA are interested in deposing. Order 8638 makes no account of that fact; rather it unlawfully limits the deponents to those individuals designated by Staff and/or the DPA.
10. 26 *Del. C.* § 508 also references the rules of the Superior Court, which include Rule 30(b)(6), which provides that depositions can be taken of private corporations such as Exelon. Given my interest in this matter, I desire to take a deposition of Exelon on the issue of its renewable energy policies, practices and positions. It does not appear that any of the witnesses who the PSC Staff and the DPA have designated have such expertise, thus necessitating a 30(b)(6) deposition.
11. The cases cited by the Joint Applicants in opposition to the Motion are not on point; indeed, they are beside the point. Each involved a situation where (a) there was no statutory right to take deposition; or (b) where a statutory or regulatory provision allowed parties to only suggest that a deposition be taken and explicitly placed the decision on whether a deposition would occur in the hands of the Hearing Examiner. Thus, none of the cited cases address a situation like we have here where: (a) the General Assembly affords each party to a PSC docket a statutory right to take depositions; (b) the deposition right states that depositions may be taken in the same manner as set forth in specified judicial rules of civil procedure;

and (c) unequal time has been allocated to parties, any one of which could be adverse to some or all of the other parties.

WHEREFORE, for the reasons set forth above, Jeremy Firestone requests the Senior Hearing Examiner:

1. Grant the Motion for Reconsideration;
2. Allow all parties to take and defend depositions;
3. Remove all time limitations imposed; and
4. Grant such other relief as is appropriate and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy Firestone". The signature is fluid and cursive, with the first name "Jeremy" and last name "Firestone" clearly distinguishable.

Jeremy Firestone

October 24, 2014

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

| | | |
|---------------------------------------|---|-----------------------|
| IN THE MATTER OF THE APPLICATION |) | |
| OF DELMARVA POWER & LIGHT COMPANY, |) | |
| EXELON CORORPATION, PEPCO HOLDINGS |) | PSC DOCKET NO. 14-193 |
| INC., PURPLE ACQUISITION CORPORATION, |) | |
| EXELON ENERGY DELIVERY COMPANY, LLC |) | |
| AND SPECIAL PURPOSE ENTITY, LLC |) | |
| FOR APPROVALS UNDER THE PROVISIONS |) | |
| OF 26 <i>Del. C.</i> §§ 215 AND 1016 |) | |
| (FILED JUNE 18, 2014) |) | |

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2014, that I caused **JEREMY FIRESTONE'S RESPONSE IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER 8638** to be filed in Delafile and additionally served on all parties on the email service list by email attachment.

Respectfully submitted,



Jeremy Firestone
24 October 2014